

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-defendant,

APPLE INC.,

Defendant, Counterclaimant.

Case No. 4:20-cv-05640-YGR-TSH

**RESPONSES TO EPIC’S OBJECTIONS
TO SPECIAL MASTER RULINGS ON
APPLE INC.’S PRODUCTIONS OF RE-
REVIEWED PRIVILEGED
DOCUMENTS**

The Honorable Thomas S. Hixson
San Francisco Courthouse
Courtroom E - 15th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Magistrate Judge Hixson,

Pursuant to section 4 of the Joint Stipulation and Order Approving Privilege Re-Review Protocol (Dkt. 1092) (the “Protocol”), Apple respectfully submits the following Responses to Epic’s Objections to certain of the Special Masters’ rulings on Apple’s productions of re-reviewed and privileged documents, rendered on April 29, 2025. We are submitting these documents for *in-camera* review contemporaneously with this filing.

Apple’s responses relate only to documents Apple believes are not already covered by Your Honor’s and Judge Gonzalez Rogers’ existing rulings on Apple’s privilege assertions in this post-judgment discovery. As previously noted, *see* Dkt. 1109, Apple reserves all rights as to documents affected by those rulings, including any post-judgment appellate rights.

Document Related to Management Entitlement: Entry No. 8854 (PRIV-APL-EG 00238352)

Apple will produce PRIV-APL-EG_00238352 without redaction.

Emails: Entry Nos. 9037 (PRIV-APL-EG 00240097), 9066 (PRIV-APL-EG 00240364), 10101 (PRIV-APL-EG 00248470)

PRIV-APL-EG_00240097 is an email chain initiated by a non-lawyer to Jason Cody (in-house counsel). The non-lawyer requests Mr. Cody's feedback on a summary for internal discussion about tax implications and due diligence related to new App Store products and services in the European Union. Mr. Cody then provides his response and feedback. In the final email, the non-lawyer forwards Mr. Cody's response to another non-lawyer. Because this is an exchange for the purpose of soliciting and providing legal advice, it is privileged. *See United States v. Sanmina Corp.*, 968 F.3d 1107, 1116 (9th Cir. 2020).

PRIV-APL-EG_00240364 is an email chain initiated by Jason Cody (in-house counsel) to outside counsel seeking legal tax advice regarding new App Store products and services in the European Union. Approximately half of the chain consists of exchanges between Apple (including Mr. Cody) and outside counsel discussing the requests for legal advice and outlining the issues for discussion. The remaining half of the chain is an internal discussion among Apple employees (including Mr. Cody) regarding the substance of the conversations with outside counsel and planning for next steps. The last email in the chain is an aside among non-lawyers regarding scheduling matters. Because this is an exchange for the purpose of soliciting and providing legal advice, *see Sanmina*, 968 F.3d at 1116, and a written record of legal advice received from outside counsel, *see Dolby Lab's Licensing Corp. v. Adobe Inc.*, 402 F. Supp. 3d 855, 866 (N.D. Cal. 2019); *Chrimar Sys. Inc. v. Cisco Sys. Inc.*, 2016 WL 1595785, at *3 (N.D. Cal. Apr. 21, 2016), it is privileged.

PRIV-APL-EG_00248470 is an email chain initiated by a non-lawyer requesting feedback from various recipients, including Ling Lew (in-house counsel), on new guidance for developers related to In-App Events. Ms. Lew responds with detailed feedback and proposed revisions for the draft guidance. The remainder of the email consists of brief statements by non-lawyers confirming their agreement with the draft guidance. Because this is an exchange for the purpose of soliciting and providing legal advice from in-house counsel, who in fact delivers detailed advice, it is privileged. *See Sanmina*, 968 F.3d at 1116.

DATED: May 7, 2025

WEIL, GOTSHAL & MANGES LLP
By: /s/ Mark A. Perry
Counsel for Defendant Apple Inc.